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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the United Nations High Commissioner for Human Rights on the rights of indigenous peoples

Summary

The present report is submitted pursuant to Human Rights Council resolution 33/13. It contains information on relevant developments relating to human rights bodies and mechanisms and outlines the activities undertaken by the Office of the United Nations High Commissioner for Human Rights at Headquarters and in the field that contribute to the promotion and full application of the provisions of the United Nations Declaration on the Rights of Indigenous Peoples, and follow-up on the effectiveness of the Declaration. The report covers the period from May 2016 to May 2017.

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I. Introduction

1. In its resolution 33/13 on human rights and indigenous peoples, the Human Rights Council requested the United Nations High Commissioner for Human Rights to continue to submit to it an annual report on the rights of indigenous peoples containing information on relevant developments in human rights bodies and mechanisms. It also requested the High Commissioner to report on activities undertaken by the Office of the United Nations High Commissioner for Human Rights (OHCHR) at Headquarters and in the field that contribute to the promotion of, respect for and full application of the provisions of the United Nations Declaration on the Rights of Indigenous Peoples.

2. The present report focuses on the work of OHCHR on the rights of indigenous peoples, including the participation of indigenous peoples in United Nations processes and support provided to the mandates of the Special Rapporteur on the rights of indigenous peoples and the Expert Mechanism on the Rights of Indigenous Peoples. The report provides illustrative examples of OHCHR activities and initiatives undertaken at Headquarters and by field offices that contribute to the realization of the rights of indigenous peoples. It also outlines recent developments within United Nations human rights bodies and mechanisms, including treaty bodies, and the activities of special procedure mandate holders, as far as their work pertains to indigenous peoples.

II. Participation of indigenous peoples in United Nations processes

3. Every year, OHCHR supports indigenous peoples in improving their knowledge of and participation in United Nations human rights bodies and mechanisms.

4. During the reporting period, 29 indigenous peoples' representatives (13 women and 16 men) from Argentina, Australia, Bangladesh, the Bolivarian Republic of Venezuela Brazil, Canada, Chile, Colombia, the Democratic Republic of the Congo, Ethiopia, French Guyana, Guatemala, India, Israel, Kenya, Mali, Mexico, Morocco, Nepal, the Plurinational State of Bolivia, the Russian Federation, Rwanda, Thailand and the United States of America participated in the annual indigenous fellowship programme, which took place in Geneva between June and July 2016. The fellows were introduced to issues of particular relevance to indigenous peoples, such as the human rights of indigenous peoples in the context of business and extractive industries, international financial institutions and women's rights. All the fellows attended the ninth session of the Expert Mechanism, at which they organized their own side event on the topic of indigenous perspectives on the right to health. Moreover, a national fellow worked with the OHCHR Senior Human Rights Adviser in Nairobi.

5. OHCHR also organized a senior indigenous fellowship programme over the course of four months to provide on-the-job training. In 2016, the senior indigenous fellow came from Australia and was involved in the facilitation of events and the preparation of analytical briefs, reports and speeches. She also participated in trainings on critical human rights issues and attended the sessions of the Human Rights Council and the Expert Mechanism.

6. Over the past 31 years, the mandate of the United Nations Voluntary Fund for Indigenous Peoples has been expanded seven times, in order to support the participation of indigenous peoples in an increasing number of human rights mechanisms. In 2016, the Fund allowed the allocation of 98 grants to support the participation of representatives from indigenous peoples' organizations and communities in sessions of the Permanent Forum on Indigenous Issues (25), the Expert Mechanism (20), the Human Rights Council (2), including its universal periodic review (1), and of treaty bodies (9).

7. The Fund also supported meetings convened to follow up the outcome document of the World Conference on Indigenous Peoples, including the General Assembly consultation process aiming to enhance the participation of indigenous peoples' representatives in

United Nations meetings on issues affecting them. The participation of the beneficiaries of the Fund at those two meetings was crucial to their success.

8. In addition to providing financial support to enable the participation of indigenous peoples in United Nations meetings, the Fund allocated resources to equip indigenous peoples with the tools needed to make them truly effective participants in those meetings. For example, in partnership with the organization Indigenous Peoples' Centre for Documentation, Research and Information, the Fund organized human rights training modules in Geneva and New York, in the margins of the sessions of the Expert Mechanism and the Permanent Forum.

III. Activities of the Office of the United Nations High Commissioner for Human Rights and recent developments in human rights bodies and mechanisms

9. Despite considerable advances in terms of participation of indigenous peoples, democratic space for indigenous human rights defenders is shrinking in many places. In parallel, indigenous peoples are rarely consulted on development priorities and strategies, extractive industries and the use of lands, territories and other resources that have an impact on their rights. The lack of access to justice for indigenous peoples in State legal systems, the lack of statutory recognition and adequate protection of indigenous and community land rights and the negative impact of environmental destruction on the health and food security of indigenous peoples all contribute to the challenges experienced by indigenous peoples worldwide.

10. In order to address these concerns and translate the promise of the United Nations Declaration on the Rights of Indigenous Peoples into reality, OHCHR provided technical assistance to Member States, indigenous peoples, civil society organizations and United Nations bodies. OHCHR strengthened its efforts to involve indigenous peoples in all international initiatives that affect them, including the implementation of the 2030 Agenda for Sustainable Development. OHCHR has assisted national partners in reforming and implementing legal frameworks, policies, strategies and national action plans, as called for in the outcome document of the World Conference.

11. In many contexts, the work of OHCHR has focused on supporting improved follow-up to human rights mechanisms' recommendations on indigenous peoples' rights. During the reporting period, indigenous peoples' rights were mentioned in the recommendations and concluding observations of several treaty bodies, and in the reports, communications and other activities of several special procedure mandate holders. These United Nations human rights mechanisms provided detailed, country-specific recommendations to improve the implementation of indigenous peoples' rights, including on ensuring that indigenous peoples have the resources and support to build their capacity, so as to be able to claim their rights and interact on equal footing with the authorities, the private sector and human rights mechanisms, free from harassment and reprisals. They also highlighted the need that all those whose decisions have an impact on indigenous peoples and their lands — from State authorities to business enterprises and international financial institutions — are familiarized with the standards of the Declaration and understand that they are commitments that need to be respected.

A. Business, extractive industries and human rights

12. One of the key areas of concern for OHCHR and human rights mechanisms has been the protection of indigenous peoples' rights in connection with business and extractive industries.

13. A number of OHCHR field presences have paid special attention to the procedural and substantive aspects required for States to respect the principle of free, prior and informed consent and to enable the meaningful participation of indigenous peoples in the

context of large-scale projects and economic interests over indigenous lands, territories and natural resources.

14. For example, the Office of the United Nations High Commissioner for Human Rights OHCHR in the Plurinational State of Bolivia monitored two consultation processes for mining projects. The Office urged the Mining Administrative Jurisdictional Authority to engage in a genuine dialogue with indigenous communities in order to protect and promote their collective interests.

15. The Office of the United Nations High Commissioner for Human Rights in Honduras has advocated for the inclusion of international human rights standards in the government-led process to discuss a draft law on the right to free, prior and informed consent. In March 2017, the Office held several meetings with the main national private and industrial associations to promote the Guiding Principles on Business and Human Rights and the United Nations "Protect, Respect and Remedy" Framework. Furthermore, at the request of the Honduran authorities, the Special Rapporteur conducted a visit to the country in April 2017 to follow up to the recommendations on the process to regulate free, prior and informed consent and consultation.

16. In March 2017, OHCHR organized an expert seminar in Boulder, United States of America, jointly with the University of Colorado Law School. The main objective of the seminar was to collect substantive information for the study by the Expert Mechanism on good practices and challenges in business and in access to financial services by indigenous peoples.

17. In August 2016, the Special Rapporteur submitted to the Human Rights Council at its thirty-third session the second of three reports dedicated to international investment agreements and their impacts on indigenous peoples' rights (A/HRC/33/42). In her report to the General Assembly at its seventy-first session (A/71/229), the Special Rapporteur chose to explore how conservation measures affect indigenous people and recommended means to increase respect for indigenous peoples' rights. In February 2017, the Special Rapporteur carried out a follow-up visit to examine the situation of indigenous peoples in the United States, in particular to the situation related to extractive industries.

18. During the reporting period, the Committee on Economic, Social and Cultural Rights recommended to Honduras that it draft clear guidelines and regulations for evaluating the social and environmental impact of natural resource exploitation projects, in particular those carried out in territories of indigenous or Afro-Honduran peoples. The Government was urged to ensure that communities affected by the exploitation of natural resources are consulted, receive compensation for damages or losses incurred and receive a share of the profits from said activities.

19. The Human Rights Committee urged Colombia to step up its efforts to ensure the timely and effective implementation of the plans developed for the preservation of the 34 indigenous peoples identified as being at risk of cultural or physical extinction or disintegration. Many of those indigenous peoples are represented in the indigenous human right defenders network in Putumayo developed by the Office of the United Nations High Commissioner for Human Rights in Colombia, supporting the effective use of tools and mechanisms for the protection of their territories. The Office also supported the indigenous Nasa people of Putumayo, in coordination with the regional Ombudsman's Office in implementing a protection mechanism called "*tutela*" for claiming their rights, including in connection with planned extractive activities in the territory.

20. The Committee on Economic, Social and Cultural Rights urged the Philippines to ensure that free, prior and informed consent of the indigenous peoples concerned is obtained before granting licences to private companies; and that indigenous peoples are represented by their own freely chosen representatives in local decision-making bodies, such as local mining boards and development units.

21. The Committee recommended that Sweden review relevant legislation, policies and practices that regulate activities that may have an impact on the rights and interests of the Sami people, including development projects and the operations of extractive industries, and in particular the Minerals Act, the Minerals Strategy and the Environmental Code.

22. The Committee on the Rights of the Child recommended that Peru require all companies to undertake assessments, consultations and full public disclosure of the environmental, health-related and human rights impacts of their business activities and their plans to address such impacts, ensuring that all affected groups of indigenous peoples are involved in relevant consultation processes and that their views, including the views of indigenous children, are duly taken into account.

23. On 1 May 2017, the Committee on the Elimination of Racial Discrimination issued an admissibility decision concerning a petition against Sweden submitted by the Head of the Saami Council Human Rights Unit. The petitioners alleged that Sweden had breached its obligation under the Convention when granting to a private mining company an exploitation concession consisting of three open-pit mines in a region where pasture areas of critical importance to reindeer herding cycle are located. The petition has been declared admissible and the Committee will review its merits in an upcoming session.

B. Human rights defenders

24. During the period under review, the shrinking of democratic spaces and the criminalization of protest activities continued to pose many challenges for human right defenders working for the rights of indigenous peoples.

25. At the high-level event to mark the tenth anniversary of the United Nations Declaration on the Rights of Indigenous Peoples, the Assistant Secretary-General for Human Rights recalled that, according to the non-governmental organization (NGO) Frontline Defenders, out of 281 human rights defenders killed in 25 countries in 2016, almost half had been defending their land, environment and indigenous rights, despite the repeated calls for protection of indigenous human rights defenders by the Special Rapporteur and others.

26. The protection of those defending indigenous peoples' rights was also raised by various OHCHR field presences. The Office of the United Nations High Commissioner for Human Rights in the Plurinational State of Bolivia issued a press release to urge the Public Ministry to investigate the facts and identify those responsible for the threats and acts of aggression against human rights defenders and their NGOs, who supported the process of indigenous autonomy in Charagua Iyambae, by a group of local settlers who opposed the indigenous autonomous process.

27. The Office of the United Nations High Commissioner for Human Rights in Colombia prioritized the monitoring of situations of violence, insecurity and abuses affecting indigenous peoples, including attacks against indigenous leaders. It also provided training and technical assistance to 150 indigenous guards from the Nasa, Embera Chami and Motilón Bari communities, enabling them to exercise their authority in cases of breaches of their own laws and to coordinate with public security forces in cases that fall under the ordinary jurisdiction of the competent prosecution office.

28. The Office of the United Nations High Commissioner for Human Rights in Guatemala has registered and documented dozens of cases of threats and attacks against indigenous human rights defenders, especially in the context of the defence of lands, territories and natural resources, coordinating with relevant State authorities to provide and follow up on protection measures for the victims, including with the Unit for the Analysis of Attacks against Human Rights Defenders of the Ministry of the Interior. OHCHR is also providing technical assistance to the Government in the development of a public policy on the protection of human rights defenders.

29. Together with the International Labour Organization (ILO), the Office provided technical assistance to the Ministry of Labour and Social Security for developing a protocol to monitor the situation of agricultural workers, the majority of whom are indigenous.

30. The Office of the United Nations High Commissioner for Human Rights in Honduras monitored issues related to lack of land demarcation and alleged corruption on the provision of titles over indigenous lands, territories and resources, observing an increase

in violence against indigenous human rights defenders, who faced smear campaigns, criminalization and severe attacks against their life and physical integrity.

31. The Office has also been monitoring closely the case of the murder in March 2016 of the indigenous human rights defender and environmentalist Berta Cáceres, including the implementation of protection measures of the National Protection Mechanisms granted to her relatives and lawyers and to the members of the Council of Popular and Indigenous Organizations of Honduras. The Inter-American Commission on Human Rights has also granted them precautionary measures. The Office has coordinated efforts with the International Advisory Group of Experts and various American NGOs, including the Mission to Support the Fight against Corruption and Impunity in Honduras.

32. Human rights treaty bodies have also raised concerns about the situation of human rights defenders working on indigenous peoples' rights. The Committee on Economic, Social and Cultural Rights expressed alarm at the defamation of, threats made against and, in particular, murder of human rights defenders, including leaders of indigenous and Afro-Honduran groups. The Committee also expressed concerns about the murders of Berta Cáceres and René Martínez and recommended that Honduras investigate those murders, duly punish those found responsible and widely disseminate the results of the investigations.

33. The Committee for the Elimination of Racial Discrimination expressed concerns at the constant threats against and murders of human rights defenders and leaders of indigenous and Afro-Colombian peoples and recommended that Colombia adopt effective and timely measures to prevent acts of violence against human rights defenders, including leaders and defenders of the rights of indigenous and Afro-Colombian peoples, ensure effective protection of their lives and personal safety and conduct thorough investigations and bring effective prosecutions of persons who threaten their lives and physical safety.

34. In his report to the General Assembly at its seventy-first session (A/71/281), the Special Rapporteur on the situation of human rights defenders chose to explore the issue of environmental human rights defenders and recommended that States guarantee the right of indigenous communities to consultation and participation in decisions at every stage of a project's life cycle. He also urged United Nations organizations and agencies to address the legal gaps that heighten risks for environmental human rights defenders, including weak environmental standards and laws protecting the rights of indigenous peoples, their land rights and customary title to territories and resources.

C. Early-warning mechanisms and monitoring of human rights violations

35. During the reporting period, OHCHR pursued several activities aimed at assisting national authorities and other relevant actors in taking steps to prevent or mitigate human rights violations, including by supporting early warning mechanisms, risk assessments and rapid response capacities.

36. In October 2016, the Office of the United Nations High Commissioner for Human Rights in the Plurinational State of Bolivia provided technical assistance and support to the Ombudsman's Office in relation to the Tacana people's complaint, which referred to the existence of indigenous peoples living in isolation in a territory where activities of oil exploration were taking place. Despite the complaint, oil operations continued. The Tacana people requested that the Inter-American Commission on Human Rights take precautionary measures.

37. The Office of the United Nations High Commissioner for Human Rights in Colombia supported the work of various protection mechanisms, such as the National Protection Unit of the National Commission on Human Rights for Indigenous Peoples. The Office also worked with indigenous authorities in strengthening their control and self-governance of lands, territories and resources that they possess by reason of traditional ownership.

38. Human rights treaty bodies also raised issues related to early warning. The Committee on the Elimination of Racial Discrimination recommended that Colombia

redouble its efforts to ensure full respect for human rights and international humanitarian law in relation to the territories of indigenous peoples, inter alia by ensuring that the risk reports issued by the early warning system are duly taken into account by the relevant authorities, particularly the Inter-Agency Early Warning Committee.

39. The Office of the United Nations High Commissioner for Human Rights in Guatemala carried out over 50 missions to observe specific cases of alleged human rights violations in the country, focusing on the human rights situation of indigenous agricultural workers, cases of threats and attacks against indigenous human rights defenders and cases of potential or escalating social conflicts resulting from extractive industries' activities affecting indigenous peoples. Many of those missions were carried out together with the National Human Rights Institution.

40. The Office of the United Nations High Commissioner for Human Rights in Honduras carried out more than 10 monitoring missions to observe social conflicts escalation resulting from land tenure issues, development and extractive projects.

41. On an ongoing basis, the Special Rapporteur on the rights of indigenous peoples has responded to specific cases of alleged human rights violations. Over the year in review, the Special Rapporteur has taken action on some 38 cases, including in the following countries: Australia, Brazil, Canada, Colombia, the Democratic Republic of the Congo, Ecuador, Ethiopia, Guatemala, Honduras, India, Indonesia, Kenya, Mexico, Morocco, Nicaragua, Panama, Paraguay, the Philippines, the United Republic of Tanzania and the United States. The Special Rapporteur also issued a communication to the World Bank.

D. Access to justice and strengthening the legal protection of indigenous peoples' rights

42. The Office of the United Nations High Commissioner for Human Rights in the Plurinational State of Bolivia assisted the Supreme Court and the Plurinational Constitutional Court in the elaboration of a protocol for coordination and cooperation between ordinary and indigenous jurisdictions, taking into account international and national standards on indigenous peoples' rights and the Court's jurisprudence. In May 2017, the Office contributed to the third meeting of authorities of indigenous jurisdictions, during which the protocol was validated, with the participation of more than six hundred indigenous peoples' representatives.

43. The Office also supported the establishment of the first autonomous indigenous community of Charagua Yiambae and the election of the first Guarani autonomous government. The Office monitored the process, including the referendum for the adoption of the autonomous status, the elections and the entry into operation of the indigenous authorities in 2017.

44. From May 2016 to March 2017, within the framework of discussing a new constitution in Chile, the Office of the United Nations High Commissioner for Human Rights in Chile together with the United Nations Development Programme, ILO, the United Nations Children's Fund and indigenous representatives, at the invitation of the Chilean Ministry of Social Development, integrated a consultative council tasked to observe and provide technical advice on how the State can ensure and conduct a participatory process with indigenous peoples in line with international standards. Over 17,016 indigenous people from all regions of the country participated in the various meetings.

45. In August of 2016, the Office participated in a training session on indigenous peoples' rights in constitution-making. The Office delivered a presentation on indigenous peoples' rights under the Declaration. The event gathered over 100 representatives from all regions of the country, including public officers from the Ministry of Social Development and the Indigenous National Service, as well as representatives from universities, indigenous communities and United Nations agencies.

46. The Office of the United Nations High Commissioner for Human Rights in Colombia participated in key decision-making processes, such as the international forum on free, prior and informed consent. The forum served as a platform for the exchange of good

practices between indigenous peoples from Colombia, Mexico, Norway and Peru. The Office also provided advice to the National Commission for the Coordination of the National Judicial System, including the Special Indigenous Jurisdiction, on devising a work plan to strengthen indigenous peoples' traditional systems for the administration of justice.

47. In the light of its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee on the Elimination of Racial Discrimination recommended that Colombia improve the functioning of the special indigenous courts, guarantee access to justice and uphold respect for the fundamental right to due process, with guarantees, in cases involving members of indigenous peoples.

48. The Office of the United Nations High Commissioner for Human Rights in Honduras participated as an observer in the Inter-institutional Commission for the implementation of the sentences handed down by the Inter-American Court of Human Rights in the cases of *Punta Piedra v. Honduras* and *Triunfo de la Cruz v. Honduras* (October 2015).[1] In its rulings, the Court found Honduras to be in breach of its obligation to guarantee the collective rights of the Garifuna people due to its failure to provide an effective response to conflicting land titles affecting the communities. The Court requested Honduras to take steps to provide effective reparation and guarantees of non-repetition. It also urged Honduras to review legislative instruments found to be in breach of the right to free, prior, and informed consent, such as the General Mining Act of 2013.[2]

49. The Office of the United Nations High Commissioner for Human Rights in Guatemala has provided technical assistance to the Office of the Attorney General in developing internal guidelines for public prosecutors to avoid the criminalization of human rights defenders, which often result in serious cases of social and cultural disintegration within indigenous communities.

50. Through its Maya Programme, the Office of the United Nations High Commissioner for Human Rights in Guatemala has assisted indigenous peoples and the Government in relation to 11 strategic litigation cases involving issues related to access to land and resources, the protection of traditional knowledge in textile weavings, the legal recognition of indigenous communities' radios and the provision of adequate and culturally appropriate health services, achieving important legal and policy advances in these areas. Also in the framework of its Maya Programme, the Office supported the judiciary in developing an educational module for judges on access to justice for indigenous peoples. The Office carried out trainings for judges in Quetzaltenango, the second largest city in Guatemala, which has a significant indigenous population. The Office further assisted the Office of the Attorney General in developing a policy on access to justice for indigenous peoples, taking into account social, cultural, language and economic barriers that impede access to justice for indigenous peoples in the country. The policy, the product of several years' work, was launched on 24 May 2017, and contemplates the creation of a secretariat on indigenous peoples within the Office of the Attorney General.

51. The Office has supported the translation of the Constitution of Guatemala in four indigenous languages. A child-friendly version of the Constitution was launched at the department of Quiché in February 2017, together with representatives of the Ministry of Education and the President of the Constitutional Court.

52. As part of the technical secretariat of the National Dialogue on Justice Reform, the Office provided guidance on relevant human rights standards in order to include the recognition of indigenous jurisdictions within the Constitution of Guatemala, among other proposed reforms to strengthen the justice system. It also facilitated the participation of indigenous representatives.

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[1] Available from www.corteidh.or.cr/docs/casos/articulos/seriec_304_esp.pdf and www.corteidh.or.cr/docs/casos/articulos/seriec_305_esp.pdf.

[2] See www.poderjudicial.gob.hn/CSJ/Documents/Leyes%20Comentadas/Ley%20General%20de%20Minería%20(14.6mb).pdf.

93. The Office supported the implementation of reparation measures, including through health programmes and housing, ordered in the historic February 2016 judgment of the Sepur Zarco case, which marked the first case where crimes committed against Q'eqchi' indigenous women, including sexual slavery during an armed conflict, were prosecuted in the country.

94. The Office of the United Nations High Commissioner for Human Rights in Honduras continued to support the work of the Inter-institutional Commission on the case of Miskito divers. The Commission was established in 2012 following a case brought by the Association of Disabled Divers Honduran Miskito, the Association of Miskito Indian Women Mairin Asla Takanka and the Elder Council Almuk Nani Asla Takanka before the Inter-American Court of Human Rights.[7]

95. In 2016, the Commission on Human Rights of the Philippines and OHCHR co-organized a workshop to reinforce the capacity of the normative framework for the protection of the rights of minorities and indigenous peoples in Mindanao province in the Philippines. The workshops took place in Cotabato and Davao and included government line agencies, national and regional commissions and civil society organizations. Following the training, OHCHR was able to contribute to the revised draft national anti-discrimination legislation.

96. The Office of the United Nations High Commissioner for Human Rights in Tunisia provided support to an interministerial group in preparing a draft law on racial discrimination that penalizes any discrimination on the grounds of ethnicity. The Office also supported the national mechanism on reporting and follow-up in preparing the report to the Committee for the Elimination of Racial Discrimination and advising civil society organizations working on Amazigh rights with regard to their submission to the Committee.

97. The Human Rights Committee urged Ecuador to adopt a specific legal and institutional framework governing the division of responsibilities between indigenous courts and ordinary courts and to guarantee respect for the rights and interests of indigenous communities, peoples and nationalities, ensuring that all members of such communities fully enjoy their rights under the Covenant.

98. The Committee against Torture, in considering the report of Ecuador, expressed concern that the bill on coordination and cooperation between the indigenous and ordinary justice systems was still awaiting adoption by the National Assembly. It encouraged the State party to take the legislative measures needed to establish mechanisms of coordination and cooperation between the indigenous and ordinary justice systems, as prescribed by article 171 in the Constitution of Ecuador, in order to guarantee fundamental rights and freedoms (see CAT/C/ECU/CO/7, paras. 19-20).

99. The Committee on Enforced Disappearances for the first time made reference to indigenous peoples in its concluding observations to Colombia (CED/C/COL/CO/1). The Committee expressed concern about reports of serious difficulties, in practice, in searching for disappeared persons and in identifying their remains. It recommended that the State party intensify its efforts to ensure that all actions to identify and return remains duly take into account the traditions and customs of the peoples or communities to which the victims belong, in particular indigenous peoples or Afrodescendent communities.

E. Land rights and food security

100. The Office of the United Nations High Commissioner for Human Rights in Cambodia continued to work with the Ministry of Land Management, Urban Construction and Planning, local governments and civil society organizations to support indigenous peoples' efforts to apply for collective land titles and provide legal aid to communities that have suffered from land rights violations. The Office also collaborated with the Ministry of Rural Development and the local authorities of Koh Kong Province on the registration of

[7] Available at https://www.cidh.oas.org/annualrep/2009sp/Honduras11306.04.sp.htm.

the identity of eight indigenous communities of the Areng valley. OHCHR facilitated the building of trust between indigenous peoples and the authorities and raised awareness of indigenous peoples' rights among all stakeholders. In Kampong Speu, the Office held meetings with the provincial cadastral office to support the process of preliminary mapping of the communal land of the Oral indigenous community, a process that has been halted owing to a question surrounding the preliminary mapping, which the indigenous community has opposed.

61. The Office supported the participation of indigenous representatives in ongoing consultations on three law and policy documents related to intellectual property rights: a draft law on agricultural land; a draft environmental code; and draft guidelines on public participation in environmental impact assessments. The Office continued to work with the Ministry of Land Management, Urban Construction and Planning, the Ministry of Rural Development, local governments and civil society organizations to support the efforts of indigenous peoples to apply for collective land titles. OHCHR assisted with the provision of legal aid to communities that have suffered violations of their land rights. It also supported the Bunong communities from Busra in Mondulkiri Province to better assert their rights in relation to negotiations with a private company that had been granted a land concession. OHCHR observed and facilitated the meetings of the tripartite committee, which comprised representatives from the company, the Bunong communities affected by the land concession and local authorities. As a follow-up to the project, OHCHR partnered with an independent mediation group and committed to provide technical support to the affected indigenous communities during the pre-mediation period. Compensation agreements have since been reached in relation to one sacred site and the company made a commitment to review over 100 pending land claims. The role of OHCHR as a third-party broker helped the parties to engage in good-faith negotiations and to seek solutions to outstanding disputes over indigenous peoples' land and sacred forests.

62. The Office of the United Nations High Commissioner for Human Rights in Colombia supported the establishment of an Ethnic Commission for Peace and the Defence of Territorial Rights, an alliance of indigenous and Afro-Colombian organizations, and contributed to its inclusion in the Havana peace dialogues between the Government and the Revolutionary Armed Forces of Colombia (FARC). The outcome of this engagement was the inclusion of the "Ethnic Chapter" in the final peace accord, which includes principles applicable to the entire accord that guarantee that Afro-Colombians' and indigenous peoples' rights are safeguarded. The Office also provided support to local dialogue processes in Cauca and contributed to the agreements reached between the Uwa people and the Government in relation to gas exploitation in their ancestral territory. It further supported the dialogue between governmental institutions and indigenous peoples in Nariño and Putumayo on the voluntary programmes to substitute the growing of illicit crops with legal ones, in the framework of the implementation of the peace agreement.

63. The Office participated at the Mesa Permanente de Concertación, a national forum in which the representatives of indigenous peoples' main communities dialogue with the national Government on the adoption and implementation of legislative or administrative measures that may affect them.

64. The Office of the United Nations High Commissioner for Human Rights in Guatemala is providing technical assistance to the institutions responsible for dealing with land related conflicts, such as the Secretary of Agrarian Affairs and the Land Fund. There are currently 1,448 land conflicts in Guatemala, including on the existence of overlapping land titles, territorial limits, regularization and occupation of lands. The Office monitors cases of forced displacement of indigenous communities reclaiming lands, from which they were often forcibly displaced during the armed conflict and which are now under the control of private interests. The Office is also monitoring and documenting cases of conflicts faced by indigenous and *campesino* communities related to the administration of protected areas.

65. In August 2016, OHCHR organized a three-day meeting in Nakuru, Kenya, to enhance dialogue between members of the Endorois community, the Kenya National Human Rights Commission and Department of Justice, as well as the Ministry of Tourism and Kenya Welfare Service, as a follow-up to the decision by the African Commission on

Human and Peoples' Rights on the Endorois case (276/2003), and discussed a co-management process for Lake Bogoria.

66. In that regard, the Committee on Economic, Social and Cultural Rights noted with concern that, in Kenya, the implementation of the decision had been long delayed, despite its acceptance (see E/C.12/KEN/CO/2-5, para. 16). It recommended that Kenya implement the decision without further delay and ensure that the Endorois are adequately represented and consulted at all stages of the implementation process. It also recommended that Kenya set up a mechanism to facilitate and monitor the implementation, with active participation of the Endorois.

67. The Office of the United Nations High Commissioner for Human Rights in Myanmar contributed to a national policy dialogue on the rights of indigenous peoples in Myanmar, co-organized in Nay Pyi Taw by the Ministry of Ethnic Affairs, the Department of Economic and Social Affairs and the Chin Human Rights Organization. The event brought together over a hundred indigenous peoples' representatives from different parts of the country, strengthening ties among indigenous peoples and with interlocutors in Government and the international community.

68. In Paraguay, OHCHR together with partners from the inter-agency thematic group on human rights and indigenous peoples' rights developed guidelines to promote gender integration in relation to issues related to the right to participation and consultation and the right to land. As a result, indigenous women are in a better position to contribute to public policies on issues affecting them. Moreover, since 2015, OHCHR has participated as an associate in the Joint Programme on Food and Nutrition Security in Paraguay, which focuses on indigenous peoples and peasants communities. A key activity of the Programme is the development of right-to-food indicators, based on OHCHR human rights indicators and methodology.

69. In Paraguay, OHCHR also participated as an observer in negotiations in preparation of the friendly settlement agreement between the Paraguayan State and the Ayoreo-Totobiegosode people. The negotiations are based on the request by the Inter-American Commission on Human Rights for the adoption of precautionary measures in favour of the rights of the Ayoreo-Totobiegosode people, especially of the communities in voluntary isolation, known as the Jonoine-Urasade.

70. The Committee on Economic, Social and Cultural Rights recommended that Costa Rica protect the right of indigenous peoples to own, use, develop and control the lands, territories and natural resources that they possess, including through such legal recognition and protection as may be necessary, and ensure that lands occupied by non-indigenous persons are returned to them.

71. The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance visited Argentina from 16 to 23 May 2016. In his report on the mission (A/HRC/35/41/Add.1), he analysed the discrimination faced by indigenous peoples, in particular in terms of access to economic, social and cultural rights, as well as violations of civil and political rights. The Special Rapporteur also visited Australia from 28 November to 5 December 2016, during which time he addressed issues related to the situation of indigenous peoples (Aboriginal and Torres Strait Islanders). The Special Rapporteur also visited Fiji from 7 to 12 December 2016. In his report on the mission (A/HRC/35/41/Add.3), he addressed challenges in the fight against racism, racial discrimination, xenophobia and related intolerance, in particular the relationship between the indigenous iTaukei and Indo-Fijian communities and the question of landownership.

F. Indigenous peoples' cultural rights, right to health and violence against indigenous women and girls

72. The Office of the United Nations High Commissioner for Human Rights in Colombia provided substantive and technical support to indigenous peoples, resulting in a historic sentence by the Colombian Constitutional Court, which considered that the Atrato River is "a living being". The Office provided information to the Court and accompanied

the magistrates to travel along the river so they could witness, understand and experience the dimensions of the destruction caused by large-scale gold mining activities using toxic elements, such as mercury and heavy-duty machinery, in addition to forest destruction.

73. In March 2016, the Office of the United Nations High Commissioner for Human Rights in Tunisia, together with the Ministry in charge of human rights, organized two national consultations where civil society organizations working on the rights of the Amazigh had the opportunity to engage in a discussion with national authorities. They addressed concerns related to cultural rights, including the right to learn and use the Tamazight language and to give children Amazigh names, which is not allowed currently under Tunisian law.

74. The Office of the United Nations High Commissioner for Human Rights in Guatemala monitored the troubling case of 41 girls, including indigenous girls, who died following a fire in the Hogar Seguro de la Virgen de Asunción, having been locked in a room as a disciplinary measure. The girls were living in the home under the protection of the State. The Office made recommendations regarding the need to develop culturally appropriate and locally based responses to child protection, in coordination with indigenous families and communities.

75. The Human Rights Committee recommended that Ecuador take the necessary steps to ensure that proper consultations are held with indigenous communes, communities, peoples and nationalities with a view: (a) to obtaining their free, prior and informed consent concerning any measure that might have a substantial impact on their way of life and their culture; (b) to expediting the adoption of the bill on consultation with them; (c) to ensuring that they are properly consulted during that process; and, in particular, (d) to ensuring that no extractive or any other activities are conducted that may place the lives and livelihoods of indigenous peoples living in isolation in a more vulnerable situation.

76. The Office of the United Nations High Commissioner for Human Rights in Colombia contributed to making a film[4] in which the Bora and Miraña peoples of the Amazon explained how gold mining using mercury and cyanide is affecting their lands and territories, with debilitating effects on their health. The film also illustrated how their ancestral culture and ways of life are threatened by these activities. Furthermore, following an agreement reached by the *mesa amazónica*, a coordination space between the government of the department of Amazonas and indigenous authorities in which OHCHR acts as a guarantor, a group of traditional authorities is building their own health calendars and epidemiology studies according to their traditional knowledge.

77. The Office of the United Nations High Commissioner for Human Rights in Guatemala provided technical assistance to the Ministry of Health to implement an intercultural, comprehensive and inclusive health-care model. Through its Maya Programme, the Office also supported the recognition of the work of indigenous midwives. The Office is also working with State institutions to implement a 2016 judgment of the Constitutional Court ordering the Ministry of Education to implement a bilingual and intercultural education programme in La Antigua Santa Catarina Ixtahuacán, in the department of Sololá.

78. The Committee for the Elimination of Racial Discrimination recommended that Colombia allocate adequate resources to the health sector and redouble its efforts to ensure accessibility, availability, affordability and quality of health care, paying particular attention to the needs of indigenous and Afro-Colombian peoples through such action as the development and implementation of intercultural health service plans that take account of the geographical characteristics of rural areas and provide for the active participation of indigenous and Afro-Colombian peoples. The Committee also recommended that Colombia take the necessary steps to ensure that the policies of ethnic education and intercultural education fulfil the objective of promoting and preserving the cultural identity of indigenous and Afro-Colombian peoples.

[4] Available from www.youtube.com/watch?v=51XKVDAaOCM.

79. During its ninth session, in July 2016, the Expert Mechanism held a panel discussion on the promotion and protection of the rights of indigenous persons with disabilities, a discussion on follow-up to the World Conference on Indigenous Peoples, including the review of the mandate of the Expert Mechanism, and a discussion on best practices and strategies for the implementation of the United Nations Declaration on the Rights of Indigenous Peoples. The Expert Mechanism finalized and adopted a study on the right to health and indigenous peoples, with a focus on children and youth (A/HRC/33/57). The study was submitted to the Human Rights Council at its thirty-third session, in September 2016.

80. On 7 and 8 July 2016, the Special Rapporteur on the rights of persons with disabilities and the Special Rapporteur on the rights of indigenous peoples co-hosted a two-day expert group meeting in Geneva on indigenous persons with disabilities. The experts highlighted that indigenous persons with disabilities face exclusion, marginalization and multiple layers of discrimination on the basis of their disability, sex and ethnic origin. Following the meeting, for the first time ever, the situation of indigenous persons with disabilities was discussed as a priority human rights issue at the ninth session of the Expert Mechanism.

81. During the thirty-third session of the Human Rights Council, OHCHR organized an annual half-day discussion on the rights of indigenous peoples with a focus on the causes and consequences of violence against indigenous women and girls, including those with disabilities. The panel examined structural, systemic, public forms of violence experienced by indigenous women and girls in contemporary society, including lack of access to justice for such violence and assessed the development of legal and policy responses to violence against indigenous women. The panel was moderated by the Chair of the Expert Mechanism on the Rights of Indigenous Peoples. The panellists included the Special Rapporteur on the rights of indigenous peoples, the President of the Sami Parliament of Norway and other experts from Australia, Mexico and the Philippines.

82. The Special Rapporteur on violence against women, its causes and consequences visited Australia in February 2017. In her end of mission statement,[5] the Special Rapporteur highlighted issues related to violence against Aboriginal and Torres Strait Islander Women and girls, institutionalized violence against indigenous and other women in prison and overrepresentation of indigenous women in prison.

G. Development of national action plans

83. One of the most important elements of the outcome document of the World Conference on Indigenous Peoples is the call for the preparation of detailed, well-resourced national action plans to translate the standards of the Declaration into concrete measures. Building on the extensive experience of OHCHR in supporting national plans, including plans for human rights and for combating racism, OHCHR is developing a human rights-based guidance for action plans, in cooperation with the Department of Economic and Social Affairs and in close consultation with indigenous peoples and other partners.

84. During the period under review, the Office of the United Nations High Commissioner for Human Rights in the Plurinational State of Bolivia provided technical assistance to the Foreign Ministry for the development of an indigenous peoples' national action plan for the period 2017-2020, which has been incorporated into the sectorial plans of the executive body. The process of developing a national plan was participatory and included several indigenous peoples' organizations.

[5] Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21243&LangID=E.

H. Mandate of the Expert Mechanism on the Rights of Indigenous Peoples

85. At its thirty-third session, the Human Rights Council adopted its resolution 33/25, amending the mandate of the Expert Mechanism. Following extensive consultations and an expert workshop, the Council amended the mandate of the Expert Mechanism. Its new mandate is to provide the Council with expertise and advice on the rights of indigenous peoples as set out in the Declaration, and assist Member States, upon request, in achieving the ends of the Declaration through the promotion, protection and fulfilment of the rights of indigenous peoples. Specific new elements of the mandate include: upon request, assisting Member States and/or indigenous peoples in identifying the need for and providing technical advice regarding the development of domestic legislation and policies relating to the rights of indigenous peoples; providing Member States, upon their request, with assistance and advice for the implementation of recommendations made at the universal periodic review and by treaty bodies, special procedures or other relevant mechanisms; upon the request of Member States, indigenous peoples and/or the private sector, engaging and assisting them by facilitating dialogue, when agreeable to all parties, in order to achieve the ends of the Declaration; and identifying, disseminating and promoting good practices and lessons learned regarding the efforts to achieve the ends of the Declaration, including through reports to the Council.

86. In March 2017, OHCHR supported two intersessional meetings of the Expert Mechanism, hosted respectively by the Government of Canada and the Government of the Russian Federation. These intersessional meetings allowed the members of the Expert Mechanism to reflect on their new mandate and devise strategies for its implementation.

I. Universal periodic review

87. Issues related to indigenous peoples' rights were addressed in a number of recommendations arising from the universal periodic review during the twenty-fifth to twenty-seventh sessions of the Working Group on the Universal Periodic Review. Recommendations on indigenous peoples were addressed to Antigua and Barbuda, Brazil, Ecuador, Hungary, Papua New Guinea, Saint Vincent and the Grenadines, Suriname, Thailand and the United Republic of Tanzania. The recommendations to either ratify or implement the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169) and to fully implement the United Nations Declaration on the Rights of Indigenous Peoples were made many times. Another recommendation was to take measures to guarantee to indigenous peoples the full respect of human rights, in particular through the establishment of mechanisms for their prior and informed consent on issues that affect them. Other issues that were raised related to indigenous peoples' access to education, especially in their mother tongue, and equal access to health care, safe drinking water, justice and political participation. Additional recommendations on the rights of indigenous people related to the preservation of their land, culture and resources; the adoption of measures to reduce the negative impact of mining on the environment and the rights of indigenous peoples and their lands, in conformity with international standards; and the establishment of formal platforms to guarantee and protect the rights of indigenous peoples and to strengthen the legal protection of indigenous peoples in comprehensive anti-discrimination legislation.

IV. Conclusions

88. **During the reporting period, OHCHR supported indigenous peoples in finding ways to address some of the major challenges they face, including by assisting States in facilitating and providing access to legal remedies for indigenous peoples. It also delivered capacity development for indigenous communities to help them make use of national legal systems and strengthen their advocacy for the recognition of indigenous peoples' justice systems. OHCHR further supported States, national human rights institutions and civil society in empowering individuals and communities to monitor deteriorating situations and put in place systems to monitor and supervise the**

activities of extractive or development companies, and in the drafting and implementation of domestic legislation to protect indigenous peoples' rights.

89. **However, more efforts are needed to effectively fill the gaps in national laws, policies and strategies, in line with the outcome document of the World Conference. There is an urgent need to step up efforts to prevent the exploitation of natural resources on indigenous lands without respecting the principle of free, prior and informed consent and to provide support to human rights defenders working for the rights of indigenous peoples, including improving access to justice and statutory recognition and protection of land rights of indigenous peoples.**